

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT WATTS,

Defendant-Appellant.

UNPUBLISHED

April 3, 2008

No. 276994

Wayne Circuit Court

LC No. 06-011193-01

Before: Kelly, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Officer Hopp testified that he and three other officers responded to a call of shots fired when he saw two black males “kind of tucked away in a cubby hole of a vacant building.” The two men ran to a car, entered it, and fled. The car turned on Riopelle, and then stopped. Defendant, who was driving, jumped out of the car and started running toward an alley. Hopp and one of his partners, Officer McDonald, chased defendant on foot. The officers lost sight of defendant, but subsequently received a dispatch that the Hazel Park police were detaining a suspect.

McDonald testified the officers saw defendant remove a black handgun from his right waistband and toss it into a yard just south of an alley. After losing sight of defendant, he then went back to the location where he had seen defendant throw the weapon, and retrieved an automatic handgun. Approximately two feet away, McDonald found a gun magazine that was compatible with the firearm. A fingerprint analysis was performed on the handgun, but no fingerprints were found.

Defendant admitted at trial that he fled from the police, but stated that he did so because he had absconded from parole. After losing his pursuers, he walked to a Hazel Park parking lot. When he saw Hazel Park police officers, he hid in a dumpster, where they found him. Defendant maintained that he did not have a weapon, and did not throw away a weapon as he ran.

Defendant's sole contention on appeal is that the trial court erred when it refused to allow him substitute counsel prior to trial. We review a trial court's decision regarding substitution of counsel for an abuse of discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). Appointment of substitute counsel requires a showing of good cause and that the substitution will not unreasonably disrupt the judicial process. Good cause exists where a defendant and his counsel develop a legitimate difference of opinion with regard to a fundamental trial tactic. *Id.* Mere allegations that defendant lacks confidence in counsel do not establish good cause to substitute counsel. *Id.* at 463. Nor may a defendant "purposely break down the attorney-client relationship by refusing to cooperate with his assigned attorney and then argue that there is good cause for a substitution of counsel." *Id.* at 462.

After reviewing the record, we conclude that defendant's complaints do not provide sufficient support for a finding that the trial court abused its discretion. Contrary to defendant's assertion on appeal, the trial court did not superficially review defendant's grievances, but instead showed what appears to be admirable patience with defendant. The record does not demonstrate a difference of opinion regarding a fundamental trial tactic. At trial, defendant's generalized allegations of a lack of confidence in trial counsel did not show that defendant and counsel differed on trial strategy. *Id.* at 463. Nor has defendant expressed any indication of what additional or different defense he would have pursued had trial counsel not objected. The only specific example defendant cites on appeal concerns an assertion that counsel would not subpoena Hazel Park police officers, who were apparently already listed on the prosecution's witness list. This is not a showing of fundamental strategic differences. Defendant's assertions concerning defense counsel's lack of preparation are contradicted by counsel's successful pursuit of a fingerprint analysis on the firearm, and her successful request for a private investigator to review the scene and the evidence. Defendant's complaint concerning his inability to receive a discovery packet appears to be a deficiency in communication that could be remedied without substitution of counsel, as counsel and the trial court attempted to do before trial. In addition, defendant's alleged denigration of counsel does not provide a proper rationale for granting his substitution of counsel request. *Id.* We find that the trial court's decision to urge better communication rather than appoint substitute counsel was a principled decision under the circumstances. It was therefore not an abuse of discretion. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Donald S. Owens
/s/ Bill Schuette